

1 ALAN J. LAZARUS (SBN 129767)
DRINKER BIDDLE & REATH LLP
2 50 Fremont Street, 20th Floor
San Francisco, CA 94105-2235
3 Telephone: (415) 591-7500
Facsimile: (415) 591-7510
4

5 SIOBHAN A. CULLEN (SBN 179838)
DRINKER BIDDLE & REATH LLP
6 1800 Century Park East, Ste. 1500
Los Angeles, CA 09967
7 Telephone: (310) 203-4071
Facsimile: (310) 229-1285
8

Attorneys for Defendants
9 DAIICHI SANKYO, INC. AND
DAIICHI SANKYO US HOLDINGS, INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 SUSANNE AMBLER and RICHARD
14 AMBLER,

15 Plaintiffs,

16 vs.

17 DAIICHI, SANKYO, INC., dba Sankyo
USA Development, Sankyo Pharma
18 Development, Sankyo Pharma Inc., Daiichi
Sankyo Pharma Development, Daiichi
19 Pharmaceuticals, Inc., Daiichi Medical
Research, Inc., and Daiichi Pharma
20 Holdings, Inc; DAIICHI SANKYO US
HOLDINGS, INC., parent company of
21 Daiichi Sankyo, Inc.; DAIICHI SANKYO
CO., LTD., parent corporation of Daiichi
22 Sankyo US Holdings, Inc. and/or Daiichi
Sankyo, Inc., fka Sankyo Company, Ltd.,
23 Daiichi Pharmaceutical Company, Ltd.;
and DOES 1 through 600, inclusive,

24 Defendants.
25

Case No. '14CV1475WQHBLM

**NOTICE OF REMOVAL AND REMOVAL
OF ACTION TO FEDERAL COURT
UNDER 28 U.S.C. § 1441(b) (DIVERSITY)**

DEMAND FOR JURY TRIAL

1 **TO THE CLERK OF THE FEDERAL DISTRICT COURT FOR THE SOUTHERN**
2 **DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE that without submitting to the jurisdiction of this Court and
4 without waiving any available defenses, defendants Daiichi Sankyo, Inc. and Daiichi Sankyo US
5 Holdings, Inc. (collectively referred to as “Removing Defendants”),¹ by and through their
6 undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this notice of
7 removal of this action from the Superior Court of the State of California, County of San Diego,
8 where the action is currently pending, to the United States District Court for the Southern District
9 of California. As addressed below, diversity jurisdiction exists because there is complete
10 diversity among the parties pursuant to 28 U.S.C. § 1332(a) and the amount in controversy
11 exceeds \$75,000, exclusive of costs and interest. In support of this notice of removal, Removing
12 Defendants state as follows:

13 1. On April 24, 2014, plaintiffs Susanne Ambler and Richard Ambler (“Plaintiffs”)
14 filed a complaint in the Superior Court of the State of California, County of San Diego, entitled
15 *Susanne Ambler, et al. v. Daiichi Sankyo, Inc., et al.*, Case No. 37-2014-00012743-CU-PL-CTL
16 (the “Complaint”). A true and correct copy of the Complaint is attached hereto as Exhibit 1.

17 2. In this products liability action, Plaintiffs seek damages for alleged injuries that
18 Susanne Ambler claims resulted from her alleged ingestion of Benicar HCT®, a prescription
19 medication. *See generally* Compl. ¶¶ 14-17. Removing Defendants deny Plaintiffs’ allegations.

20 3. No further proceedings have been had in the state court action in relation to
21 Plaintiffs’ Complaint.

22 4. This case is properly removed to this Court under 28 U.S.C. §§ 1332 and 1441
23 because it is a civil action in which the amount in controversy exceeds \$75,000, exclusive of costs
24 and interest, and there is complete diversity amongst the parties. As shown below, the procedural
25 requirements for removal are satisfied and this Court has original jurisdiction.

26 _____
27 ¹ Defendant Daiichi Sankyo US Holdings, Inc. has not been served in this action. This defendant appears
28 specially herein with full reservation of all rights and defenses, including its defenses of failure of service,
insufficiency of process, and insufficiency of service of process.

1 **I. DEFENDANT HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR**
2 **REMOVAL.**

3 5. Defendant Daiichi Sankyo, Inc. was served on May 29, 2014. Accordingly, this
4 notice of removal is timely filed pursuant to 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v.*
5 *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (30-day time period for removal runs
6 from the date of formal service).

7 6. Venue in the United States District Court for the Southern District of California is
8 proper because this matter was filed in the Superior Court of the State of California, County of
9 San Diego, which lies within this district. *See* 28 U.S.C. §§ 84(d), 1441(a).

10 7. Copies of all process, pleadings, orders, and other papers received by Removing
11 Defendants are attached hereto as Exhibit 1. *See* 28 U.S.C. § 1446(a).

12 8. A copy of this notice of removal will be filed with the Clerk of the Superior Court
13 of the State of California, County of San Diego. *See* 28 U.S.C. § 1446(d).

14 9. No previous application has been made for the relief requested in this removal.

15 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER**
16 **JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441.**

17 10. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because this is a
18 civil action between citizens of different states in which the amount in controversy exceeds
19 \$75,000, exclusive of costs and interest.

20 **A. The Amount In Controversy Requirement Is Satisfied.**

21 11. For purposes of removal, a removing defendant need only show that the amount in
22 controversy “more likely than not” exceeds the jurisdictional minimum of \$75,000. *Sanchez v.*
23 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). When the amount in controversy is
24 not clearly specified in the complaint, the court may consider facts in the complaint as well as in
25 the removal petition. *See Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1031 (N.D. Cal. 2002);
26 *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *accord Roe v.*
27 *Michelin N. Am., Inc.*, 613 F.3d 1058, 1063 (11th Cir. 2010) (stating that the Court “found no
28 case in any other circuit that purports to prohibit a district court from employing its judicial

1 experience or common sense in discerning whether the allegations in a complaint facially
2 establish the jurisdictionally required amount in controversy.”).

3 12. It is apparent in the Complaint that Plaintiffs seek an amount in controversy in
4 excess of \$75,000, exclusive of costs and interest. In their Complaint, Plaintiffs allege that as a
5 result of Susanne Ambler’s ingestion of Benicar HCT®, Susanne Ambler suffered bodily injuries,
6 including but not limited to “sprue-like enteropathy and/or lymphocytic colitis, microscopic
7 colitis, or collagenous colitis, manifested by chronic diarrhea, severe weight loss, nausea,
8 vomiting, malnutrition, and dehydration.” Compl. ¶ 16; *see also id.* at ¶ 17 (providing that as a
9 result of her condition, Susanne Ambler was admitted to the hospital for extended periods of time
10 and subsequently underwent difficult, sustained, and costly treatment.) Plaintiffs further allege
11 that as a result of Susanne Ambler’s ingestion of Benicar HCT®, Susanne Ambler has “suffered
12 and will continue to suffer special and general damages, including but not limited to medical and
13 incidental healthcare expenses, loss of earnings, consequential economic losses, and pain,
14 suffering, and loss of enjoyment of life.” *Id.* at ¶¶ 30, 35, 39, and 52. Richard Ambler, the
15 alleged husband of Susanne Ambler, claims that he “has suffered and will continue to suffer for
16 an indefinite time in the future, loss of services, security, companionship, and consortium of his
17 wife, Susanne Ambler.” *Id.* at ¶ 54.

18 13. Plaintiffs expressly demand damages “in excess of the unlimited jurisdiction of
19 this court.” *Id.* at ¶¶ 30, 35, 39, and 52. In addition, Plaintiffs seek compensatory general and
20 special damages as well as punitive damages. *Id.* at Wherefore Clause on p. 13.

21 14. Although Removing Defendants deny any liability to Plaintiffs, their allegations
22 of serious injury on their face, in addition to their express demand for compensatory and punitive
23 damages, plainly place more than \$75,000 in controversy. Therefore, analyzing the Complaint in
24 a light most favorable to Plaintiffs, while not admitting liability for any amount, the amount of
25 damages alleged to be in controversy for Plaintiffs exceeds \$75,000, exclusive of interest and
26 costs. *See Campbell v. Bridgestone/Firestone, Inc.*, 2006 WL 707291, at *2 (E.D. Cal. Mar. 17,
27 2006) (apparent from complaint that amount in controversy met where plaintiffs asserted strict
28 products liability, negligence, and breach of warranty claims against multiple defendants and

1 complaint sought compensatory damages for wage loss, hospital and medical expenses, general
2 damages, and loss of earning capacity); *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599
3 F.3d 1102, 1107–08 (9th Cir. 2010) (“even though the state court complaint does not specify an
4 amount” it satisfied amount in controversy requirement by requesting damages for, among other
5 things, wrongful death, loss of consortium, negligence and funeral, medical and burial expenses);
6 *In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296 (S.D.N.Y. 2001) (holding that a
7 “complaint obviously asserts a claim exceeding \$75,000” where plaintiffs alleged serious medical
8 complications from ingestion of a prescription drug); *Bailey v. J.B. Hunt Transp., Inc.*, No. 06-
9 240, 2007 WL 764286, at *6 (E.D. Pa. Mar. 8, 2007) (finding amount in controversy requirement
10 satisfied where complaint alleged a “litany of serious, permanent injuries,” “surgeries and
11 treatments” and “the alleged permanent impairment of [the] ability to enjoy life’s activities”);
12 *Butzberger v. Novartis Pharm. Corp.*, No. 06-80700-CIV-RYSKAMP/VITUNAC, 2006 U.S.
13 Dist. LEXIS 85576, at *8 (S.D. Fla. Nov. 27, 2006) (“federal jurisdiction exists where plaintiffs
14 allege personal injuries caused by prescription medications, even where, as here, they do not
15 expressly provide an[] amount in controversy”); *McCoy v. Gen. Motors Corp.*, 226 F. Supp. 2d
16 939, 941 (N.D. Ill. 2002) (“courts have routinely held that when plaintiffs allege serious,
17 permanent injuries and significant medical expenses, it is obvious from the face of the complaint
18 that the plaintiffs’ damages exceeded the jurisdictional amount”); *Quinn v. Kimble*, 228 F. Supp.
19 2d 1036, 1037–38 (E.D. Mo. 2002) (despite plaintiffs’ assertion that their total damages did not
20 exceed \$75,000, the court held that it was “facially apparent” that the amount in controversy was
21 met where plaintiffs alleged that they “suffered head, neck, and back injuries; incurred medical
22 expenses and will incur further such expenses; [and] have permanent, progressive, and disabling
23 injuries”); *Knight v. Kellogg Brown & Root, Inc.*, No. 06-11164, 2007 WL 2265206, *3 (E.D. La.
24 Aug. 6, 2007) (“given [plaintiff’s] assertion regarding her injuries, including the necessity of two
25 surgeries, implantation of hardware and screws, physical therapy, mental anguish, and a resulting
26 permanent disability, the Court find[s] that it is ‘facially apparent’ from the petition that the
27 amount in controversy likely exceeds the jurisdictional amount”).

28

1 **B. There Is Complete Diversity Between the Parties.**

2 15. There is (and was at the time the complaint was filed) complete diversity between
3 Plaintiffs and Defendants. *See* 28 U.S.C. § 1332(a).

4 16. The Complaint alleges that Plaintiffs are residents of California. Compl. ¶ 1.
5 Accordingly, Plaintiffs are citizens of the State of California for purposes of determining diversity
6 of citizenship.

7 17. Defendant Daiichi Sankyo, Inc. is now (and was at the time the Complaint was
8 filed) a corporation organized and existing under the laws of the State of Delaware, with its
9 principal place of business in New Jersey. Accordingly, for purposes of diversity jurisdiction, it
10 is a citizen of Delaware and New Jersey. *See* 28 U.S.C. § 1332(c)(1) (“a corporation shall be
11 deemed to be a citizen of any State by which it has been incorporated and of the State where it
12 has a principal place of business”).

13 18. Daiichi Sankyo US Holdings, Inc. is now (and was at the time the Complaint was
14 filed) a corporation organized and existing under the laws of the State of Delaware, with its
15 principal place of business in New Jersey. Accordingly, for purposes of diversity jurisdiction, it
16 is a citizen of Delaware and New Jersey. *Id.* Daiichi Sankyo U.S. Holdings, Inc. has not been
17 served with this lawsuit as of this date.

18 19. Daiichi Sankyo Company, Limited (incorrectly named as Daiichi Sankyo Co.,
19 Ltd.) is now (and was at the time the Complaint was filed) a corporation organized and existing
20 under the laws of Japan with its principal place of business in Japan. Accordingly, for purposes
21 for diversity jurisdiction, it is a citizen of Japan. *Id.* Daiichi Sankyo Company, Limited has not
22 been served with this lawsuit as of this date.

23 20. Although Plaintiffs purport to state claims against certain unnamed, fictitious
24 “Doe” defendants, their citizenship is disregarded for purposes of removal. *See* 28 U.S.C.
25 § 1441(a) (“[f]or purposes of removal under this chapter, the citizenship of defendants sued under
26 fictitious names shall be disregarded”).

27 21. Because Daiichi Sankyo Company, Limited and the “Doe” defendants in this
28 action have not been served, their consent to joinder in this removal is not required. *See, e.g.,*

1 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988).

2 22. Accordingly, this action involves “citizens of different states.” *See* 28 U.S.C. §
3 1332(a)(1)-(2). Because Plaintiffs are California citizens and no defendant is a citizen of the
4 State of California, removal of this action is proper under 28 U.S.C. §1441(b).

5 23. WHEREFORE, Removing Defendants remove this action from the Superior Court
6 of the State of California, County of San Diego, under Case No. 37-2014-00012743-CU-PL-CTL,
7 to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. If any question arises as to the
8 propriety of the removal of this action, Removing Defendants respectfully request the opportunity
9 to present a brief and oral argument in support of its position that this case is removable.

10 **DEMAND FOR JURY TRIAL**

11 Removing Defendants hereby demand trial by jury in this action.

12
13 Dated: June 17, 2014

DRINKER BIDDLE & REATH LLP

14
15 By: /s/ Siobhan A. Cullen
16 Siobhan A. Cullen

17 Attorneys for Defendants
18 DAIICHI SANKYO, INC. AND DAIICHI
SANKYO US HOLDINGS, INC.

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